

### REMARKS

Applicants note that the Examiner required a restriction of the claims into three groups of inventions. In particular, the Examiner required restriction of Group I: claims 1-11 and 20, drawn to a composition for protecting natural and artificial hair color from environmental insults, and Group II: claims 12-19, drawn to a method for protecting natural and artificial hair color from environmental insults. Applicants affirm election of Group I: claims 1-11 and 20. The non-elected claims have been canceled so that they can be presented in divisional applications.

The Examiner rejected claims 1 and 4 under 35 U.S.C. § 102(b) as being anticipated by US 5,380,359 to Honda et al. ("the '359 patent"). The present claims, however, require an ultraviolet absorber comprising a benzotriazole derivative, a benzophenone derivative, or a triazine derivative, none of which are taught or suggested by the '359 patent. Indeed, even though the '359 patent contains a listing of specific ultraviolet absorbers that may be used in the disclosed pigment (see col. 4, lns. 3-10), none of the ultraviolet absorbers required by Applicant's amended claims are included in or suggested by that listing.

Moreover, the unique combination of ingredients set forth in Applicant's claims exhibits surprising, beneficial results and, therefore, one skilled in the art would not expect to obtain the desired benefits by simply combining a benzotriazole derivative, benzophenone derivative, or triazine derivative with melanin and a cationic surfactant. As shown in Example 3 of Applicant's specification, a composition similar to the claimed composition, but without melanin, did not inhibit color fading nearly as much

as the claimed composition. More specifically, one embodiment of the claimed composition, as shown in Example 2, exhibited 18% less color fading than a control composition that did not contain the claimed combination of ingredients. Similarly, another embodiment of the claimed composition, as shown in Example 3, exhibited 27% less color fading than a control composition that did not contain the claimed combination of ingredients. On the other hand, a composition that was substantially the same as the composition of Example 2, but without one of the claimed components (melanin), exhibited only 5-6% less color fading than the same control composition. Thus, Applicant's claimed combination of ingredients is unique and exhibits a surprising result in that it is believed to have a beneficial protective effect that is greater than the effects of its individual components, as stated on page one of Applicant's specification. The claimed invention, therefore, is not taught or suggested by the '359 patent.

The Examiner also rejected claims 1-5 and 6-11 under 35 U.S.C. § 103(a) as being unpatentable over US 5,454,841 to Wolfram et al. ("the '841 patent") in view of US 4,668,235 to Evans et al. ("the '235 patent") or US 6,605,577 to Harrison et al. ("the '577 patent"). The Examiner acknowledges that the '841 patent does not teach benzotriazolyl butylphenol or benzotriazole derivatives, but asserts that it would have been obvious to one of ordinary skill in the art to include benzotriazolyl butylphenol or benzotriazole derivatives in the hair coloring composition disclosed in the '841 patent in view of the '235 patent, which teaches a method for protecting

natural or synthetic fibers with benzotriazole derivatives. Applicant respectfully disagrees.

First, the '841 patent teaches away from the combination suggested by the Examiner. The entire '841 patent is directed toward compositions and methods for temporarily coloring hair. Because the '841 patent focuses on *changing* one's hair color, it necessarily teaches away from combining the disclosed composition with other components directed toward maintaining and protecting one's *existing* hair color from environmental insults.

More importantly, the claimed invention would not have been obvious in view of the cited references because the unique combination of ingredients set forth in Applicant's claims exhibits surprising, beneficial results and, therefore, one skilled in the art would not expect to obtain the benefits of the claimed invention by simply adding benzotriazolyl butylphenol or benzotriazole derivatives to the composition disclosed in the '841 patent. These surprising results are explained above.

The Examiner rejected claim 20 as being unpatentable over the '841 patent in view of the '235 patent and further in view of WO/01/05363 to Sanogueira et al. ("the '363 publication"). Neither the '841 patent nor the '235 patent teaches a composition comprising benzotriazolyl butylphenol, and neither the '841 patent nor the '235 patent teaches a composition comprising cinnamidopropyltrimonium chloride, as acknowledged by the Examiner. Nonetheless, the Examiner asserts that it would have been obvious to one of ordinary skill in the art to include benzotriazolyl butylphenol in the hair coloring composition disclosed in the '841 patent in view of


the '235 patent, and to further include cinnamidopropyltrimonium chloride in the resulting composition in view of the '363 publication. Applicant respectfully disagrees.

Again, as explained above, it would not have been obvious to one of ordinary skill in the art to combine the cited references because of the surprising results obtained by the unique combination of ingredients set forth in claim 20.

Therefore, the cited references do not teach or suggest the presently claimed invention. Applicants respectfully request withdrawal of the rejections and allowance of the claims. If, for any reason, the Examiner feels that the above amendments and remarks do not put the claims in condition for allowance, the undersigned attorney can be reached at (312) 222-8105 to resolve any remaining issues.

Respectfully submitted,

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Date

  
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